

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2003-006435

11/03/2004

HONORABLE RAYMOND P. LEE

CLERK OF THE COURT
C. Cramer
Deputy

IN RE THE MARRIAGE OF
MARTHA NIBLEY BECK

FILED: 11/16/2004

JENNY G GADOW

AND

JOHN CHRISTEN BECK

LEONARD J MARK

UNDER ADVISEMENT RULING

The Court took the matter under advisement after an Evidentiary Hearing held on September 16, 2004. The Court has considered the evidence presented, pleadings, and arguments of counsel. The Court has furthermore considered the proposed findings of fact and conclusions of law submitted to the Court by Petitioner and Respondent. The Court has reviewed the testimony of the parties in its entirety after viewing the video of the proceedings recorded on computer disc. The Court enters its findings of fact and conclusions of law pursuant to Rule 52(A) of the Arizona Rules of Civil Procedure.

FINDINGS OF FACT

- (1) The Petitioner, Martha Beck (hereinafter "Wife"), and Respondent, John Beck (hereinafter "Husband"), were married June 21, 1983.
- (2) The parties are mother and father of three children; Catherine Beck (DOB: 02/05/1986); Adam Beck (DOB: 05/08/1988); Elizabeth Beck (DOB: 05/10/1990).
- (3) The parties do not raise the issues of custody, child support or spousal maintenance; the only issue before the Court concerns the enforceability

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of a mediated marriage settlement agreement entered into and signed on July 1, 2003 by Wife and July 14, 2003 by Husband.

- (4) Both Husband and Wife received their Bachelor's, Master's and Doctoral Degrees from Harvard University.
- (5) In approximately 1996, the parties entered into an oral agreement to structure their finances on a monthly basis in the following manner: Husband would pay for all household expenses out of his earnings and split the remaining money with Wife on a 50/50 basis; Wife would pay for taxes out of her earnings and split the remaining amount with Husband on a 50/50 basis. Each party then established their own separate bank account(s) from these retained earnings for their own purposes and under their exclusive control. Neither party had access to the other account(s) maintained by their spouse. This arrangement remained in place for approximately the next 6 years.
- (6) In 2003, the parties mutually determined that the marriage could not be salvaged and decided to dissolve the marriage.
- (7) The parties were determined to mediate their own divorce without the assistance of counsel and retained mediator Paul Josef of the Center for Complete Communication for purposes of mediating and resolving their dispute. Josef did not provide legal counsel or advice to either party.
- (8) The parties met with the mediator approximately four times for a total of approximately 6 hours in May and June of 2003. They negotiated and signed a 21-page mediated marital settlement agreement; the first 13 pages dealt with financial matters including the allocation of assets and debts, division of property and payment of taxes while and the final 8 pages established the parenting and custody arrangements regarding the children. It is the terms and conditions regarding the financial portion of the agreement that has brought this dispute before the Court.
- (9) In the process of negotiating this agreement, Wife had access and opportunity to review Husband's files and financial documents.
- (10) Wife described Husband's demeanor as hostile and angry during the mediation process. She was motivated to settle the matter as amicably as possible, for her and the children's benefit.

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- (11) The parties set forth their division of personal property including automobiles, furniture, savings accounts and retirement/pension accounts. The financial accounts identified in the Mediation Agreement are valued as of June 16, 2003, the last date for which financial statements were available before the parties signed the settlement agreement in July.
- (12) Those values, as set forth in the agreement as incorporated in the agreement as follows:

"Personal Property"

A. John hereby transfers to Martha, as her sole and separate property, all of his interest in all of the following personal property:

- (1) Except as otherwise specifically provided herein, all personal effects, household furniture and furnishings, and all other articles, tangible and intangible, of personal property in Martha's possession as of the Agreement Date.
- (2) Any and all sums in the Wells Fargo savings account no. 662147XXXX (in Martha's name). As of June 16, 2003, this account had a balance of approximately \$29,312.00.
- (3) Any and all sums in the Wells Fargo checking account no. 092548XXXX (in Martha's name). As of June 16, 2003, this account had a balance of approximately \$6,847.00.
- (4) Any and all funds, stocks and investments held in the Morgan Stanley Dean Witter account no. 12401XXXX (in Martha's name). As of June 16, 2003, this account had an value of approximately \$40,971.00.
- (5) 2003 Lexis GS300, which had a value as of June 16, 2003 of approximately \$37,000.00.

B. Martha hereby transfers to John, as his sole and separate property, all of her interest in all of the following personal property:

- (1) Except as otherwise specifically provided herein, all personal effects, household furniture and furnishings, and all other articles, tangible and intangible, of personal property in John's possession as of the Agreement Date.

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- (2) Any and all sums in the Wells Fargo savings account no. 684179XXXX (in John's name). As of June 16, 2003, this account had a balance of approximately \$40,151.00.
- (3) Any and all sums in the Wells Fargo checking account no. 076336XXXX (in John's name). As of June 16, 2003, this account had a balance of approximately \$5,540.00.
- (4) Any and all sums in the E-Trade checking account no. 20732XXXX (in John's name). As of June 16, 2003, this account had a balance of approximately \$16,594.00.
- (5) Any and all funds, stocks and investments held in the E-Trade account no 1057-XXXX (in John's name). As of June 16, 2003, this account had a value of approximately \$61,217.00.
- (6) Any and all funds; stocks and investments held in the UBS PaineWebber account no. _____XXXX (in John's name). As of June 16, 2003, this account had a value of approximately \$1,829.00.
- (7) 2001 Lexis LX470, Arizona license plate no. 662FZZ, which had a value as of June 16, 2003 of approximately \$35,000.00.

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6. Retirement Benefits

- A. John has established the following retirement account: (1) E-Trade SEP IRA account no. 52813XXXX, which had a value as of June 16, 2003 of approximately \$11,240.00. and (2); Accenture 401(k) account no. 52813XXXX, which had a value as of June 16, 2003 of approximately \$84,188.00 (cumulatively "John's Retirement Accounts").
- B. Martha has established the following retirement accounts: (1) Morgan Stanley Dean Witter IRA account no. 12401644XXXX, which had a balance as of June 16, 2003 of approximately \$39,642.00; (2) Morgan Stanley Dean Witter IRA account no. 12401644XXXX, which had a balance as of June 16, 2003 of approximately \$1,250.00; and (3) TIA CREF IRA account no. TIA C575XXX-X, CREF U575XXX-X, which

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had a balance as of June 16, 2003 of approximately \$14,252.00 (cumulatively "Martha's Retirement Accounts").

- C. Martha and John both understand that their interests in their retirement accounts may include the right to receive benefits upon death, disability, retirement, or termination of employment under several different options. "Interest" in benefits as used in this context means all benefits, including benefits attributable to the member's account balance, as well as rights from the employer's contribution, under any option available to the member upon death, disability, retirement, termination of employment, or any other event.
 - D. Martha hereby releases all right, title and interest in John's Retirement Accounts, and transfers the same to John as his sole and separate property.
 - E. John hereby releases all right, title and interest in Martha's Retirement Accounts, and transfers the same to Martha as her sole and separate property.
 - F. John shall individually pay any and all taxes, penalties, and assessments incurred by reason of his receiving payment from John's Retirement Accounts. Martha shall individually pay any and all taxes, penalties, and assessments incurred by reason of her receiving payment from Martha's Retirement Accounts."
- (13) Adding up those assets, which are found on pages 3, 4, and 5, at paragraphs 5 and 6 of the settlement agreement, Wife receives assets totaling \$169,274.00 and Husband receives assets totaling \$255,759.00.
- (14) At the time that the parties were negotiating this mediation agreement, they entered into a rather complex transaction regarding the marital residence. The parties' marital home had a value in excess of \$1,000,000.00. The parties decided to take out a \$270,000.00 line of credit against the marital home. The money from the line of credit was used by Husband to purchase a new home. The parties furthermore agreed to place the home on the market with a sales price of \$1,050,000.00. Wife would have sole and exclusive right to live in the home beginning July 1, 2003, until sold. The terms of the agreement detail how the financial arrangement was to work:

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"Real Property

. . .

- (8) Martha and John estimate that the costs involved in selling the Real Property, including any repairs and improvements, sales commissions, title insurance, and escrow fees, would equal approximately \$73,500.00.
- (9) Based on the foregoing, if the Real Property sold for \$1,050,000.00, and assuming that the escrow officer would pay off the Line of Credit before disbursing funds to the parties, there would be equity in the Real Property equal to approximately \$353,099.00 (\$1050,000.00 - \$353,401.00 - \$270,00.00 \$73,500.00).
- (10) Upon close of escrow for the sale of the Real Property, the net sale proceeds shall be paid out of escrow as follows: (1) first, to Martha, the amount equal to one half of the balance on the Line of Credit paid out of escrow, plus the amount of any prior payments made on the Line of Credit by Martha, (2) second, to Martha, the amount equal to the principal paid by Martha on the Mortgage during the time period beginning on the Agreement Date and ending at close of escrow; (3) third, to John, the next eighty thousand dollars (80,000.00); and (4) fourth, the remainder equally to the parties. 50% to John and 50% to Martha."
- (15) Each party will receive a significant additional financial benefit from the sale of the marital home although the amount could not (and still cannot) be determined at the time of the mediation agreement.
- (16) Wife signed a disclaimer deed to Husband's new home waiving her claim to right, title, possession or interest in Husband's new residence, which became his sole and separate property.
- (17) Husband has a consulting business, North Star Leadership Group, and has prior teaching experience. He is a published author, although the royalties he receives are negligible. Currently, he is not a member of any faculty or under contract with any academic institution but he is attempting to market and expand his consulting business. There was no dollar value established for Husband's business endeavors.
- (18) According to the Husband's financial affidavit, his earnings from North Star are anticipated to be \$48,000.00 annually.

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- (19) Wife is an author, lecturer, freelance writer and life coach. She has operated her business as a sole proprietor and has recently incorporated under the name of Martha Beck, Inc. She has also established a business known as Martha Nibley Beck, LLC, which receives certain asset income from her business endeavors.
- (20) She wrote five books during the marriage which earn varying amounts of royalties annually. Her most profitable book is entitled "Expecting Adam" which consistently generates royalties of approximately \$10,000.00 a year. Wife acknowledged that future royalties will exceed \$100,000.00. She also writes a monthly column for "O", Oprah Winfrey's magazine, for which she receives \$7,000.00 a month. Since June, 2003, Wife has received royalties and an advance on a new book, part of which was written before this agreement, of approximately \$125,000.00 which she has not split with Husband.
- (21) Wife's business interests generate revenue of approximately \$200,000.00 annually, far in excess of Husband's earnings. Husband testified, without rebuttal, that the market value of Wife's business is approximately \$400,000.00, which would be her sole and separate property under the terms of the mediated marital settlement agreement.
- (22) Neither Wife nor Husband are making claim for any interest in the other's business enterprises or royalties. The language in paragraph 4(D) of the agreement states that neither Husband nor Wife, after the agreement is executed, shall have
- "any interest in any property of the other not otherwise dealt with in this agreement whether now in the name of the other party alone, in trust for another or held jointly with any third party, including but not limited bank accounts, securities, stocks, bonds, businesses, corporations, professional licenses, retirement plans, deferred compensation plans, litigation awards, or any other type of property." (Emphasis added).
- (23) Wife was advised that she was entitled to seek legal counsel at any time before executing the agreement. The mediator advised both parties that he was not providing legal counsel to either party. Both parties acknowledged that they were advised of their right to seek legal counsel and to have the agreement reviewed by an attorney before signing it. Wife advised the mediator that she had not talked to a lawyer but that she

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would do so if she thought it were necessary at any time “during mediation or before signing this agreement”.

- (24) The mediator advised them and the parties acknowledged that they were encouraged to obtain independent valuations of documentation of all property and debts identified in the mediation agreement.
- (25) The mediator advised the parties that they were under no obligation to sign the agreement and were encouraged to deliberate further and take whatever time was necessary before entering into the agreement.
- (26) Both Husband and Wife indicated that they had read “each and every page” of the mediated settlement agreement and all exhibits, and that they “agreed to the contents hereof as of the date indicated below.” The parties' signatures were affixed and notarized with Martha Beck signing July 1, 2003, and John Beck signing July 14, 2003.

CONCLUSIONS OF LAW

The issue before the Court is whether the agreement is fair and equitable and should be enforced or whether the agreement is inequitable and unfair and should be set aside. Husband seeks to enforce the agreement and Wife seeks to set the agreement aside. It is Husband's burden, as the party attempting to enforce the agreement, to show that it is a fair and equitable agreement. Sharp v. Sharp, 179 Ariz. 205, 877 P.2d 304 (Ariz. App. 1994). Arizona case law unequivocally holds that settlements are to be encouraged and that marital settlement agreements should be enforced absent a finding of fraud in the inducement of the marital agreement, Sharp v. Sharp, supra; Keller v. Keller, 137 Ariz. 447, 671 P.2d 425 (Ariz. App. 1983). The Keller Court held that

“ . . . parties to a divorce may, by agreement between themselves, settle and adjust all property rights growing out of the marital relation and, in the absence of fraud or undue influence, such an agreement is binding upon the parties.” Id., at 448.

In Garn v. Garn, 155 Ariz. 156, 745 P.2d 604 (Ariz. App. 1987) the Court articulated a similar holding:

“Our resolution of this issue begins with the general principal that parties to a lawsuit are ordinarily bound by their stipulations. Stipulations are strongly favored by the law and a ‘party to an action cannot stipulate to one thing and then later change her mind and withdraw her consent. . . .

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The Court will indulge in every reasonable presumption to uphold and enforce the terms of the stipulation.” Id. at 160.

See also, Smith v. Smith 71 Ariz. 315, 227 P.2d 214 (1951) in which the Court held that

“a property settlement agreement entered into by the parties in contemplation of divorce is valid, and in the absence of fraud or undue influences binding upon the parties. . . . When a Husband and Wife settle their property rights by agreement, if the settlement is fair and equitable, free from fraud and undue influence, the Court normally will approve it.” Id., at 318.

In Sharp, Wife argued that the agreement was unfair. One of her allegations was that Husband had used duress or coercion to force her to sign the agreement. The Court in Sharp determined that there was no showing of “duress, coercion or undue influence”. There, as here, there is no showing that Wife entered into the agreement because of fear or threats which would have pre-empted her free will or judgment. Rubenstein v. Sele, 137 Ariz. 563, 672 P.2d 492 (Ariz. App. 1983).

Unlike the Sharp case, in which there was no evidence regarding the extent of community property, there was abundant testimony and documentation regarding the nature, extent and value of the parties’ community assets. The Court in the instant case is able to make a reasonable determination regarding the parties’ financial interests. The parties disclosed or made available their financial holdings and the parties had every opportunity to determine what assets each party had in his or her possession. The Court does not find that Husband engaged in fraudulent conduct.

These and other cases underscore the proposition that settlements are to be encouraged and enforced so that the parties can resolve disputes as expeditiously as possible. Public policy recognizes that it is preferable for parties to resolve their disputes and formulate their own agreement rather than have the courts do it for them. If either party to an agreement, feeling “buyer’s remorse” can challenge and unravel the agreement, the consequence is uncertainty, delay, and mounting costs. The object of a mediated settlement is to bring finality and closure to the process and not to allow a party, after the fact, to undo the terms of the agreement and render the mediation process meaningless. In this case, both parties made life decisions and took action in reliance on this agreement. It would be unfair to Husband to order him to retreat from the terms and conditions fairly bargained for and implemented.

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In Toth v. Toth, 190 Ariz. 218, 946 P.2d 900, (1997) the Arizona Supreme Court interpreted A.R.S. 25-318 to mean that the division of property is to be “equitable, not equal” and that the trial court is “not . . . bound by any per se rule of equality” but rather to determine “what is equitable in each case.” Equitable, the Court went on to say, encompasses the “concept of fairness, dependant upon the facts of particular cases.” See also, Nace v. Nace, 104 Ariz. 20, 448 P.2d 76 (1968) which holds that the division of community property is within the sound discretion of the trial court.

In the instant case, Husband receives greater liquid assets than does Wife. However, the evidence establishes that in the future Wife will receive more assets, property rights and interests. These future assets are not quantifiable but they are significant and they equal if not exceed the differential of liquid assets Husband receives pursuant to this agreement. Although, the amounts in some of the accounts are subject to some disagreement, the holdings and their values were identified with specificity and the value of the holdings were identified at a date certain and agreed to by the parties. The home that Husband purchased which was secured by a line of credit is his sole and separate property by agreement of the parties. Wife knowingly and voluntarily signed the disclaimer deed removing consideration of Husband's sole and separate property from the calculation and division of community assets. On the other hand, Wife receives all royalties from books that she wrote during the marriage and maintains her business as her sole and separate property. Uncontradicted testimony established the market value of her business at \$400,000.00. If she were to sell that business, the proceeds would inure entirely to her benefit. The Court further finds the Wife's royalties and business earnings are property rights and included as her sole and separate property as stated in paragraph 4(D) of the agreement. (See Findings of Fact #22).

The Court does not believe that it should substitute its judgment in place of the parties who knowingly, intelligently and voluntarily entered into this binding agreement. The Court finds that Husband has met his burden and that this is a fair and equitable agreement. Wife has not demonstrated that there was fraud, misrepresentation or undue influence. Wife testified that she did not think that when she signed the agreement that it would be binding as to her until some later time. Wife stated in her deposition that even though she read the mediated settlement agreement and signed it, she didn't understand it. The Court does not find this testimony of a Harvard Ph.D. and published author to be credible. Further, the Court does not believe that it should attempt to amend or reallocate the property holdings of the parties. The choice before the Court is either to affirm the agreement as reflected in the mediated marital settlement agreement or find that it is unfair, inequitable and unenforceable and order that the parties proceed to litigate the entire matter.

The Court determines that it should follow the former course and affirms the settlement agreement as being fair and equitable and reflecting the intent of the parties.

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The Court orders that a Decree of Dissolution of Marriage and Parenting Plan consistent with the settlement agreement be lodged with the Court.

IT IS FURTHER ORDERED that each party shall be responsible for all costs and fees incurred in this matter.

NOTE: Any person representing himself/herself is responsible for notifying the Court of a change of address to assure they receive timely notice of any mailings from the Court. A form for this purpose may be downloaded from the Court's internet web site at:

<http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.

IT IS ORDERED that by signing this minute entry it shall be a formal written order of the Court.

/ s / HONORABLE RAYMOND P. LEE

JUDICIAL OFFICER OF THE SUPERIOR COURT